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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,724

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Jakob Socher

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466

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05/08/2009

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EXAMINER

WOOD, ELLEN S

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,724	Applicant(s) SOCHER, JAKOB	
	Examiner ELLEN S. WOOD	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/31/2006; 05/02/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “wavy line” defines the profile of the decorative band as described in claim 15. This term is indefinite because the definition of “wavy line” is held at the discrepancy of an individual. Does “wavy line” refer to any line that is not straight?

Election/Restrictions

3. Applicant's election with traverse of Group I, claims 13-16, drawn to a decorative band in the reply filed on 03/02/2009 is acknowledged. The traversal is on the ground(s) that Benzon does not anticipate the claimed special technical feature, and thus, a special technical relationship exists among claim Groups I, II, III and IV. This is not found persuasive because the expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. As a whole, the current application has a special technical feature that is directed to a decorative band that is intended for surrounding a food package. The applicant argues that Benzon discloses a label not a decorative band as defined by the applicant. The applicant defines the decorative bands for the intention of surrounding the periphery of a food packaging, thus it is not required that the band surrounds the entirety of the packaging. Also, the bands overlap one another or butt

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against one another does not mean that the band can not be adhesively applied over the entirety of the package as seen in Benzon. The examiner does not find applicant's arguments persuasive and the restriction is maintained.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Virog et al. (US 4,046,275, hereinafter "Virog").

In regards to claim 13, Virog discloses a three-quart thin-walled blow-molded plastic mild bottle of special design (col. 1, lines 3-4). The side wall are stiffened by a wide internally projecting substantially horizontal band which extends around the corners (col. 2 lines 45-49). The band is preferably of continuously varying depth along the sides or projecting inwardly to its greatest extent midway between the corners and tapering toward the corners (col. 2 lines 48-52, fig. 4). Thus, the band has a lateral annular wall extending between a bottom and an upper face, the band extending longitudinally between two ends and having a first and second longitudinal edge. Each band has a width (measured vertically) of about $\frac{3}{4}$ inches and has a depth (i.e. the extent to which it projects inwardly, horizontally) of over $\frac{1}{4}$ inch, preferably about $\frac{3}{8}$ inch, at its midpoint and has sloping top and bottom faces so that its cross-section in a vertical plan may

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be described as trapezoidal (col. 2, lines 52-58). Thus, at least one first portion extending longitudinally, having a maximum width; and at least one second portion having a minimum width, the minimum width being between one third and two thirds the maximum width wherein the rifts edge is rectilinear and substantially parallel to a longitudinal axis of the band. It is a decorative band (col. 2 lines 61-64).

In regards to claim 14-15, Virog discloses that at the band's midpoint and it has sloping top and bottom faces so that its cross-section in a vertical plan may be described as trapezoidal (col. 2 lines 52-58). Thus, in order for the cross-section to be viewed as a trapezoid the first portions would form a convex profile and the second portion would form a concave profile, as seen in applicant's fig. 1. This would also be considered a wavy line, because the line of the band is not straight.

In regards to claim 16, Virog discloses the band is situated at a level below the base of the handle and substantially above the base of the bottle (col. 3 lines 9-13). Thus the maximum width of the band is substantially equal to the maximum height of the lateral wall of the food packaging.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on M-F 730-5 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794